United Nations PCNICC/2001/L.1/Rev.1

Preparatory Commission for the International Criminal Court

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Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001)

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Summary

Rapporteur: Mr. Salah **Suheimat** (Jordan)

1. The Preparatory Commission for the International Criminal Court, established in accordance with resolution F adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998, met at United Nations Headquarters from 26 February to 9 March 2001, in accordance with General Assembly resolution 55/155 of 12 December 2000.

2. In accordance with paragraph 2 of resolution F of the Conference, the Preparatory Commission consists of representatives of States which signed the Final Act of the Conference and other States which were invited to participate in the Conference.

3. Under paragraph 4 of General Assembly resolution 55/155, the Secretary-General was requested to reconvene the Preparatory Commission, in accordance with resolution F of the Conference, from 26 February to 9 March and from 24 September to 5 October 2001, so as to continue to carry out the mandate of that resolution and, in that connection, to discuss ways to enhance the effectiveness and acceptance of the Court.

4. In accordance with paragraph 6 of General Assembly resolution 55/155, the Secretary-General invited, as observers to the Preparatory Commission, representatives of organizations and other entities that have received a standing invitation from the General Assembly, pursuant to its relevant resolutions, to participate in the capacity of observers in its sessions and work, and also invited as observers to the Commission representatives of interested regional intergovernmental organizations and other interested international bodies, including the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

5. Under paragraph 7 of the same resolution, non-governmental organizations may participate in the work of the Preparatory Commission by attending its plenary and its other open meetings, in accordance with the rules of procedure of the Commission, receiving copies of the official documents and making available their materials to delegates.

6. The Bureau of the Preparatory Commission, which was elected at its 1st and 2nd meetings, on 16 and 22 February 1999, continued its work, with the following composition:

Chairman:

Philippe Kirsch (Canada)

Vice-Chairmen:

George Winston McKenzie (Trinidad and Tobago)
Medard R. Rwelamira (South Africa)
Muhamed Sacirbey (Bosnia and Herzegovina)

Rapporteur:

Salah Suheimat (Jordan)

7. The Director of the Codification Division of the Office of Legal Affairs of the United Nations Secretariat, Václav Mikulka, acted as Secretary of the Preparatory Commission. The Codification Division provided the substantive servicing for the Commission.

8. At its seventh session, the Preparatory Commission proceeded with its work on the basis of its agenda (PCNICC/1999/L.1), which was adopted on 16 February 1999.

9. In accordance with the decision taken at its 26th meeting, on 8 December 2000, the Preparatory Commission agreed on a work plan for the seventh session providing for the consideration of five items — the Relationship Agreement between the Court and the United Nations, the Financial Regulations and Rules of the Court, the Agreement on the Privileges and Immunities of the Court, the Rules of Procedure of the Assembly of States Parties and the crime of aggression.

10. The Coordinators for the first four items, who were designated by the Chairman, in consultation with the Bureau, at the sixth session of the Preparatory Commission, continued their work during the seventh session, as follows:

(a) Cristian Maquieira (Chile), Coordinator for the Relationship Agreement between the Court and the United Nations;

(b) Georg Witschel (Germany), Coordinator for the Financial Regulations and Rules of the Court;

(c) Phakiso Mochochoko (Lesotho), Coordinator for the Agreement on the Privileges and Immunities of the Court;

(d) Saeid Mirzaee-Yengejeh (Islamic Republic of Iran), Coordinator for the Rules of Procedure of the Assembly of States Parties.

11. At the 27th meeting, on 26 February 2001, the Chairman, in consultation with the Bureau, designated Silvia Fernandez de Gurmendi (Argentina) as the Coordinator for the crime of aggression in the light of the unavailability of the previous Coordinator, Mr. Tuvako Manongi (United Republic of Tanzania), for this item.

12. At its 29th meeting, on 9 March 2001, the Preparatory Commission decided, in accordance with its mandate under resolution F of the Conference, to consider at its eighth session, in addition to the five items considered at its seventh session, the basic principles governing a headquarters agreement to be negotiated between the Court and the host country; and the budget for the first financial year. The Preparatory Commission also decided to establish working groups on the two new items.

13. At the same meeting, the Chairman announced that Zsolt Hetesy (Hungary) would continue as contact point for general issues.

14. Also at its 29th meeting, the Preparatory Commission took note of the oral reports of the Coordinators for the five items considered at the seventh session. At the same meeting, for ease of reference of delegations, the Commission requested the Secretariat to prepare a document on the basis of the oral reports of the Coordinators and to annex it to the proceedings of the seventh session.[1]

15. At its 28th meeting, on 6 March 2001, the Preparatory Commission was addressed by Hans Holthuis, Registrar of the International Tribunal for the Former Yugoslavia.

16. The Preparatory Commission noted with satisfaction that, during its seventh session, 15 delegates had made use of the trust fund which, pursuant to paragraph 8 of General Assembly resolution 53/105 of 8 December 1998, had been established to facilitate the participation of the least developed countries in the work of the Commission. The International Human Rights Law Institute of DePaul University provided accommodation for the delegates that attended the seventh session. The Preparatory Commission also expressed its appreciation for the recent contributions to the trust fund by the Government of Denmark and the European Commission.

17. The list of documents relating to the five items considered at the seventh session is contained in annex I to the present document.

[1] The Coordinator for the Working Group on the Rules of Procedure of the Assembly of States Parties indicated that he would be preparing a discussion paper for consideration at the eighth session of the Preparatory Commission. The discussion paper will contain a revised text of the draft Rules of Procedure of the Assembly of States Parties on the basis of discussions held in the working groups during the seventh session.

Annex I

List of documents*

[Original: Arabic/English/French/Spanish]

General documents

Symbol	*Description*
PCNICC/1999/INF/3	Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998 — Note by the Secretariat
PCNICC/2000/1	Report of the Preparatory Commission for the International Criminal Court
PCNICC/2000/1/Add.1	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part I — Finalized draft text of the Rules of Procedure and Evidence
PCNICC/2000/1/Add.2	Report of the Preparatory Commission for the International Criminal Court — Addendum: Part II — Finalized draft text of the Elements of Crimes
PCNICC/2000/INF/4	Statements made in plenary in connection with the adoption of the report of the Working Group on the Rules of Procedure and Evidence and the report of the Working Group on Elements of Crimes

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/L.4	Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000) (draft summary)
PCNICC/2000/L.4/Rev.1	Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000) (summary)
PCNICC/2000/L.4/Rev.1/Add.1	Annex II — A draft relationship agreement between the Court and the United Nations
PCNICC/2000/L.4/Rev.1/Add.2	Annex III — Draft financial regulations and rules
PCNICC/2000/L.4/Rev.1/Add.3	Annex IV — Draft agreement on the privileges and immunities of the Court
PCNICC/2000/DP.1	Proposal submitted by the United States of America — further issue for consideration by the Preparatory Commission
PCNICC/2000/INF/5	List of delegations

* General documents, documents issued at the sixth and seventh sessions of the Preparatory Commission and documents relating to the crime of aggression issued at the first to seventh sessions.

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/L.1	Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001) (draft summary)
PCNICC/2001/L.1/Rev.1	Proceedings of the Preparatory Commission at its seventh session (26 February-9 March 2001) (summary)
PCNICC/2001/L.1/Rev.1/Add.1	Annex II — A draft relationship agreement between the Court and the United Nations
PCNICC/2001/L.1/Rev.1/Add.2	Annex III — Draft financial regulations and rules
PCNICC/2001/L.1/Rev.1/Add.3 and Corr.1	Annex IV — Draft agreement on the privileges and immunities of the Court
PCNICC/2000/INF/5/Corr.1	List of delegations (sixth session) — corrigendum
PCNICC/2001/INF/1	Information document submitted by Cameroon
PCNICC/2001/INF/2	List of delegations (seventh session)

Working Group on a Relationship Agreement between the Court and the United Nations[1]

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/WGICC-UN/L.1	Draft Relationship Agreement between the United Nations and the International Criminal Court — Prepared by the Secretariat
PCNICC/2000/WGICC-UN/DP.1	Proposal submitted by Argentina, Canada and the United Kingdom of Great Britain and Northern Ireland: Comments on document PCNICC/2000/WGICC-UN/L.1
PCNICC/2000/WGICC-UN/DP.2	Proposal by Belgium — Article 2, paragraph 3
PCNICC/2000/WGICC-UN/DP.3	Proposal submitted by Italy, France, the Philippines and Poland concerning document PCNICC/2000/WGICC-UN/L.1 — Article 2
PCNICC/2000/WGICC-UN/DP.4	Proposal submitted by Spain: Comments on document PCNICC/2000/WGICC-UN/L.1
PCNICC/2000/WGICC-UN/DP.5	Proposal submitted by Bolivia, Chile, Colombia, Costa Rica, Cuba, Ecuador, France, Guatemala, Mexico, Paraguay, Peru, Spain, the Syrian Arab Republic, Uruguay and Venezuela: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 21
PCNICC/2000/WGICC-UN/DP.6	Proposal submitted by France
PCNICC/2000/WGICC-UN/DP.7	Proposal submitted by Spain

[1] No documents were issued under this heading during the first to fifth sessions of the Preparatory Commission.

Symbol	*Description*
PCNICC/2000/WGICC-UN/DP.8	Proposal submitted by Italy on document PCNICC/2000/WGICC-UN/L.1 — Article 9
PCNICC/2000/WGICC-UN/DP.9	Proposal submitted by Austria: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 6
PCNICC/2000/WGICC-UN/DP.10	Proposal submitted by the Russian Federation: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 14
PCNICC/2000/WGICC-UN/DP.11	Proposal submitted by Italy: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 14, paragraph 1
PCNICC/2000/WGICC-UN/DP.12	Proposal by the United States of America: Comments on document PCNICC/2000/WGICC-UN/L.1
PCNICC/2000/WGICC-UN/DP.13	Proposal submitted by Australia and the United States of America: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 14
PCNICC/2000/WGICC-UN/DP.14	Proposal submitted by Algeria, Iraq, Jordan, the Libyan Arab Jamahiriya, Morocco, Oman, Qatar, Saudi Arabia, the Sudan, the Syrian Arab Republic, Tunisia, the United Arab Emirates and Yemen: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 8
PCNICC/2000/WGICC-UN/DP.15	Proposal submitted by Venezuela: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 17
PCNICC/2000/WGICC-UN/DP.16	Proposal submitted by Norway: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 8
PCNICC/2000/WGICC-UN/DP.17	Proposal submitted by the United States of America: Comments on document PCNICC/2000/WGICC-UN/L.1 — Proposal for a new article
PCNICC/2000/WGICC-UN/DP.18	Proposal submitted by Belgium concerning document PCNICC/2000/WGICC-UN/L.1 — Article 8
PCNICC/2000/WGICC-UN/DP.19	Proposal submitted by Cuba: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 16
PCNICC/2000/WGICC-UN/DP.20	Proposal submitted by Venezuela concerning document PCNICC/2000/WGICC-UN/L.1 — penultimate preambular paragraph
PCNICC/2000/WGICC-UN/RT.1	Discussion paper proposed by the Coordinator

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/WGICC-UN/DP.1	Proposal submitted by Colombia in relation to document PCNICC/2000/L.4/Rev.1/Add.1
PCNICC/2001/WGICC-UN/DP.2	Proposal by Norway: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 8
PCNICC/2001/WGICC-UN/DP.3	Proposal submitted by France: Comments on document PCNICC/2000/WGICC-UN/L.1 — Article 8
PCNICC/2001/WGICC-UN/DP.4	Proposal submitted by Chile — New article on dispute settlement
PCNICC/2001/WGICC-UN/DP.5	Proposal submitted by France: Comments on document PCNICC/2000/L.4/Rev.1/Add.1 — Articles 16 and 18

Symbol	*Description*
PCNICC/2001/WGICC-UN/DP.6	Proposal submitted by Bahrain on article 13
PCNICC/2001/WGICC-UN/DP.7	Proposal submitted by Bahrain, Belgium, France, Iraq, Jordan, Libyan Arab Jamahiriya, Norway, Oman, Qatar, Saudi Arabia, the Syrian Arab Republic and the United Arab Emirates — Article 8
PCNICC/2001/WGICC-UN/DP.8	Proposal submitted by Brazil, Colombia, Mexico and Spain in relation to document PCNICC/2000/L.4/Rev.1/Add.1 — Article 13
PCNICC/2001/WGICC-UN/DP.9	Proposal submitted by France: Comments on document PCNICC/2000/L.4/Rev.1/Add.1 — Article 18
PCNICC/2001/WGICC-UN/RT.1/Rev.1	Discussion paper proposed by the Coordinator

Working Group on Financial Regulations and Rules[1]

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/WGFIRR/L.1	Draft Financial Regulations of the International Criminal Court — Prepared by the Secretariat
PCNICC/2000/WGFIRR/DP.1	Proposal submitted by Germany concerning financial regulation 3.6 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.2	Proposal submitted by Germany concerning financial regulation 4 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.3	Proposal submitted by Germany concerning financial regulations 5.2 and 5.3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.4	Proposal submitted by Germany concerning financial regulations 6.2 and 6.6 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.5	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland concerning regulation 3.3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.6	Proposal submitted by the Republic of Korea concerning regulation 1.2 (b) contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.7	Proposal submitted by the Republic of Korea concerning regulation 5.3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.8	Proposal submitted by the Republic of Korea on the allocation of financial roles among the Presidency, the Bureau of the Assembly of States Parties and the Assembly of States Parties concerning regulations 3.5, 4.5, 6.6, 9.1, 12.1, 12.5 and 12.8 contained in document PCNICC/2000/WGFIRR/L.1

Symbol	*Description*
PCNICC/2000/WGFIRR/DP.9	Proposal by Benin concerning regulations 3.2 and 11.2 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.10	Proposal by Benin concerning regulation 8 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.11	Proposal submitted by Germany concerning financial regulation 13 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.12	Proposal submitted by Malawi concerning regulations 5.1 (c) and 7.2 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.13	Proposal submitted by Spain — Draft decision of the Preparatory Commission
PCNICC/2000/WGFIRR/DP.14	Proposal by Spain concerning regulation 3 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.15	Proposal by Spain concerning regulation 1 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.16	Proposal by Spain concerning regulation 12 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.17	Proposal by Spain concerning regulation 4 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.18	Proposal by Spain concerning regulation 7 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.19	Proposal by Spain concerning regulation 6 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.20	Proposal by Spain on the annex to the draft Financial Regulations concerning audit contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.21	Proposal by Spain concerning regulation 9 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.22	Proposal by Spain concerning regulation 5 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.23	Proposal by France concerning regulations 3 and 11 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.24	Proposal by France concerning regulation 5 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.25	Proposal by France concerning regulation 6 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1

Symbol	*Description*
PCNICC/2000/WGFIRR/DP.26	Proposal by France concerning regulation 12 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.27	Proposal submitted by Italy concerning regulation 1 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.28	Proposal submitted by Italy concerning regulation 3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.29	Proposal submitted by Italy concerning regulation 5 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.30	Proposal submitted by Italy concerning regulation 7 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.31	Proposal submitted by Italy concerning regulation 12 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.32	Proposal submitted by the United States of America concerning financial regulation 3 contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.33	Proposal submitted by France concerning regulation 6 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.34	Proposal submitted by Italy on regulation 7 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/DP.35	Proposal submitted by Italy on regulation 6 of the draft Financial Regulations contained in document PCNICC/2000/WGFIRR/L.1
PCNICC/2000/WGFIRR/RT.1	Text of the draft financial regulations of the International Criminal Court, with annotations — Preamble and draft regulations 1 to 10: draft discussion paper proposed by the Coordinator
PCNICC/2000/WGFIRR/RT.1/Rev.1	Text of the draft financial regulations of the International Criminal Court, with annotations — Discussion paper proposed by the Coordinator on the preamble and draft regulations 1 to 10

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/WGFIRR/DP.1	Proposal submitted by Bosnia and Herzegovina concerning financial regulations 7.3 and 7.4 contained in document PCNICC/2000/L.4/Rev.1/Add.2
PCNICC/2001/WGFIRR/DP.2	Proposal submitted by Colombia on regulations 2.1, 5, 6 and 9 of the discussion paper proposed by the Coordinator (PCNICC/2000/L.4/Rev.1/Add.2)
PCNICC/2001/WGFIRR/DP.3	Proposal submitted by Canada for new financial regulations 1 bis and 1 ter in connection with document PCNICC/2000/L.4/Rev.1/Add.2

Symbol	*Description*
PCNICC/2001/WGFIRR/DP.4	Proposal submitted by Spain in relation to regulation 3.4 of the discussion paper proposed by the Coordinator (PCNICC/2000/L.4/Rev.1/Add.2)
PCNICC/2001/WGFIRR/DP.5	Proposal submitted by the Netherlands on regulation 3.3 of the discussion paper proposed by the Coordinator (PCNICC/2000/L.4/Rev.1/Add.2)
PCNICC/2001/WGFIRR/DP.6	Proposal submitted by France concerning regulation 4.1 of the discussion paper proposed by the Coordinator (PCNICC/2000/L.4/Rev.1/Add.2)
PCNICC/2001/WGFIRR/DP.7	Proposal submitted by Canada on regulations 1.2, 4.5, 7.2, 9.1, 10.5 and 12.8 of the discussion paper proposed by the Coordinator (PCNICC/2000/L.4/Rev.1/Add.2)
PCNICC/2001/WGFIRR/RT.1/Rev.1	Discussion paper proposed by the Coordinator
PCNICC/2001/WGFIRR/RT.2/Rev.1	Discussion paper proposed by the Coordinator
PCNICC/2001/WGFIRR/RT.3/Rev.1	Discussion paper proposed by the Coordinator

Working Group on an Agreement on the Privileges and Immunities of the Court[1]

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/WGAPIC/L.1	Draft agreement on the privileges and immunities of the International Criminal Court — Prepared by the Secretariat
PCNICC/2000/WGAPIC/DP.1	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 2 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.2	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 6 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.3	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 10 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.4	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on articles 14 and 15 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.5	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 14 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.6	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 15 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.7	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 16 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1

Symbol	*Description*
PCNICC/2000/WGAPIC/DP.8	Proposal submitted by the United Kingdom of Great Britain and Northern Ireland on article 20 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.9	Proposal submitted by Canada on article 13 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.10	Proposal submitted by Australia and the Syrian Arab Republic on article 6 of the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/DP.11	Proposal submitted by Belgium, Germany and Switzerland for an article 12 bis in the draft Agreement contained in document PCNICC/2000/WGAPIC/L.1
PCNICC/2000/WGAPIC/RT.1	Draft Agreement on the Privileges and Immunities of the International Criminal Court – Discussion paper proposed by the Coordinator

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/WGAPIC/DP.1	Proposal submitted by Colombia in relation to document PCNICC/2000/ L.4/Rev.1/Add.3
PCNICC/2001/WGAPIC/DP.2	Proposal submitted by Brazil and Mexico in relation to document PCNICC/2000/ L.4/Rev.1/Add.3
PCNICC/2001/WGAPIC/DP.3	Proposal submitted by Norway in relation to document PCNICC/2000/ L.4/Rev.1/Add.3
PCNICC/2001/WGAPIC/CRP.1	Revised text of article 13 of the draft agreement on the privileges and immunities of the Court and other consequential amendments submitted by Canada, as they emerge from footnote i of document PCNICC/2000/L.4/Rev.1/Add.3
PCNICC/2001/WGAPIC/RT.1	Discussion paper proposed by the Coordinator

Working Group on Rules of Procedure of the Assembly of States Parties[2]

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/WGRPASP/L.1	Draft Rules of Procedure of the Assembly of States Parties: Prepared by the Secretariat

[2] No documents were issued under this heading during the first to sixth sessions of the Preparatory Commission

Symbol	*Description*
PCNICC/2001/WGRPASP/DP.1	Proposal submitted by Argentina, Australia, Belgium, Brazil, Canada, Denmark, Finland, Germany, Lesotho, Liechtenstein, Mali, New Zealand, the Philippines, Portugal, South Africa, Spain, the Sudan, Sweden, Switzerland, the Syrian Arab Republic, Trinidad and Tobago, and the United Kingdom of Great Britain and Northern Ireland — Rule 88
PCNICC/2001/WGRPASP/DP.2	Proposal submitted by Switzerland — Rule 41

The crime of aggression

General documents relating to the crime of aggression

First session of the Preparatory Commission (16-26 February 1999)

Symbol	*Description*
PCNICC/1999/DP.11	Proposal submitted by Bahrain, Iraq, Lebanon, the Libyan Arab Jamahiriya, Oman, the Sudan, the Syrian Arab Republic and Yemen on the crime of aggression

Second session of the Preparatory Commission (26 July-13 August 1999)

Symbol	*Description*
PCNICC/1999/DP.12	Proposal submitted by the Russian Federation: Definition of the crime of aggression
PCNICC/1999/DP.13	Proposal submitted by Germany: Definition of the crime of aggression
PCNICC/1999/INF/2	Compilation of proposals on the crime of aggression submitted at the Preparatory Committee on the Establishment of an International Criminal Court (1996-1998), the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (1998) and the Preparatory Commission for the International Criminal Court (1999)
PCNICC/1999/INF/2/Add.1	Addendum

Third session of the Preparatory Commission (29 November-17 December 1999)

Symbol	*Description*
PCNICC/1999/L.5/Rev.1	Proceedings of the Preparatory Commission at its first, second and third sessions (16-26 February, 26 July-13 August and 29 November-17 December 1999) (summary), annex IV

Fourth session of the Preparatory Commission (13-31 March 2000)

Symbol	*Description*
PCNICC/2000/L.1/Rev.1	Proceedings of the Preparatory Commission at its fourth session (13-31 March 2000) (summary), annex IV

Fifth session of the Preparatory Commission (12-30 June 2000)

Symbol	*Description*
PCNICC/2000/L.3/Rev.1	Proceedings of the Preparatory Commission at its fifth session (summary), annex II

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/L.4/Rev.1	Proceedings of the Preparatory Commission at its sixth session (27 November-8 December 2000) (summary), annex V

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2000/WGCA/DP.1	Proposal submitted by Bosnia and Herzegovina, New Zealand and Romania

Working Group on the Crime of Aggression[3]

Third session of the Preparatory Commission (29 November-17 December 1999)

Symbol	*Description*
PCNICC/1999/WGCA/DP.1	Proposal submitted by Greece and Portugal
PCNICC/1999/WGCA/RT.1	Discussion paper proposed by the Coordinator: Consolidated text of proposals on the crime of aggression
PCNICC/1999/WGCA/RT.1/Corr.1	Corrigendum
PCNICC/1999/WGCA/RT.1/Corr.2	Corrigendum (French only)

[3] No documents were issued under this heading during the first and second sessions of the Preparatory Commission.

Fourth session of the Preparatory Commission (13-31 March 2000)

Symbol	*Description*
PCNICC/2000/WGCA/DP.1	Proposal submitted by Colombia on the definition of the crime of aggression and on conditions for the exercise of the jurisdiction of the Court with regard to this crime
PCNICC/2000/WGCA/DP.1/Add.1	Addendum
PCNICC/2000/WGCA/DP.2	Proposal submitted by Colombia on the Italian proposal made orally in the Working Group on 13 March 2000
PCNICC/2000/WGCA/DP.3	Suggestions made orally by Italy on 13 March 2000 with regard to a structure for discussion on the crime of aggression
PCNICC/2000/WGCA/RT.1	Discussion paper proposed by the Coordinator: Preliminary list of possible issues relating to the crime of aggression

Fifth session of the Preparatory Commission (12-30 June 2000)

Symbol	*Description*
PCNICC/2000/WGCA/INF/1	Reference document on the crime of aggression, prepared by the Secretariat

Sixth session of the Preparatory Commission (27 November-8 December 2000)

Symbol	*Description*
PCNICC/2000/WGCA/DP.4	Proposal submitted by Germany: The crime of aggression — A further informal discussion paper
PCNICC/2000/WGCA/DP.5	Proposal submitted by Greece and Portugal

Seventh session of the Preparatory Commission (26 February-9 March 2001)

Symbol	*Description*
PCNICC/2001/WGCA/DP.1	Proposal submitted by Bosnia and Herzegovina, New Zealand and Romania

Annex II

A draft relationship agreement between the Court and the United Nations

[*See PCNICC/2001/L.1/Rev.1/Add.1*]

Annex III

Draft financial regulations and rules

[*See PCNICC/2001/L.1/Rev.1/Add.2*]

Annex IV

Draft agreement on the privileges and immunities of the Court

[*See PCNICC/2001/L.1/Rev.1/Add.3*]

Annex V

Crime of aggression

[Original: English]

(Prepared on the basis of the discussion papers proposed by the Coordinator)[1]

Consolidated text of proposals on the crime of aggression

Definition of the crime of aggression

Option 1

1. For the purposes of the present Statute, [and subject to a determination by the Security Council regarding the act of a State,] the crime of aggression means [the use of the armed force, including the initiation thereof, by an individual who is in a position of exercising control or directing the political or military action of a State, against the sovereignty, territorial integrity or political independence of a State in violation of the Charter of the United Nations.] any of the following acts committed by [an individual] [a person] who is in a position of exercising control or capable of directing the political or military action of a State:

(a) initiating, or

(b) carrying out

Variation 1

[an armed attack] [the use of armed force] [a war of aggression] [a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing] against another State [against another State, or depriving other peoples of their rights to self-determination], in [manifest] contravention of the Charter of the United Nations, to violate [to threaten or to violate] the [sovereignty,] territorial integrity or political independence of that State [or the inalienable rights of those people] [except when this is required by the principle of equal rights and self-determination of peoples and the rights of individual or collective self-defence]

Variation 2

an armed attack directed by a State against the territorial integrity or political independence of another State when this armed attack was undertaken in manifest contravention of the Charter of the United Nations with the object or result of establishing a military occupation of, or annexing, the territory of such other State or part thereof by armed forces of the attacking State.

[1] The consolidated text of proposals on the crime of aggression was issued at the third session of the Preparatory Commission and the preliminary list of possible issues relating to the crime of aggression was issued at the fourth session.

Variation 3

Add the following paragraph to paragraph 1, variation 1, above:

2. Provided that the acts concerned or their consequences are of sufficient gravity, [acts constituting aggression include] [the use of the armed force includes] [are] the following [whether preceded by a declaration of war or not]:

(a) The invasion or attack by the armed forces of a State of a territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade [of the ports or coasts] of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed before, or its substantial involvement therein.

3. When an attack [the use of armed force] under paragraph 1 has been committed, the

(a) planning

(b) preparing, or

(c) ordering

thereof by an individual who is in a position of exercising control or capable of directing the political or military action of a State shall also constitute a crime of aggression.

Option 2

For the purposes of the present Statute and subject to a prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating or carrying out a war of aggression.

Conditions for the exercise of jurisdiction

Option 1

1. The Court shall exercise its jurisdiction with regard to the crime of aggression in accordance with the provisions of article 13 of the Statute.

2. The Security Council shall determine the existence of an act of aggression perpetrated by the State whose national is concerned in accordance with the relevant provisions of the Charter of the United Nations before proceedings take place in the Court with regard to the crime of aggression.

3. The Security Council, acting in accordance with article 13 (b) of the Statute of the International Criminal Court, shall first make a decision establishing that an act of aggression has been committed by the State whose national is concerned.

4. The Court, upon receipt of a complaint relating to the crime of aggression under article 13 (a) or (c), shall, with due regard to the provisions of Chapter VII of the Charter of the United Nations, first request the Security Council to determine whether or not an act of aggression has been committed by the State whose national is concerned.

5. The Security Council shall make a decision upon this request within [6] [12] months.

6. Notification of this decision shall be made by letter from the President of the Security Council to the President of the International Criminal Court without delay.

Variation 1

7. In the absence of a decision of the Security Council within the time frame referred to in paragraph 5 above, the Court may proceed.

8. The decision of the Security Council under paragraph 5 above shall not be interpreted as in any way affecting the independence of the Court in the exercise of its jurisdiction with regard to the crime of aggression.

Variation 2

7. Notwithstanding the provisions of paragraph 2 above, in the absence of a decision by the Security Council within the time frame referred to in paragraph 5 above, the Court shall, with due regard to the provisions of articles 12, 14 and 24 of the Charter, request the General Assembly of the United Nations to make a recommendation.

8. The General Assembly shall make such a recommendation within [12] months.

9. Notification of this recommendation shall be made by letter from the President of the General Assembly to the President of the International Criminal Court without delay.

10. In the absence of such a recommendation within the time frame referred to in paragraph 8 above, the Court may proceed.

11. The decision of the Security Council under paragraph 5 above or the recommendation of the General Assembly under paragraph 8 above shall not be

interpreted as in any way affecting the independence of the Court in the exercise of its jurisdiction with regard to the crime of aggression.

Option 2

1. The Court shall exercise its jurisdiction with regard to the crime of aggression subject to a determination by the Security Council in accordance with article 39 of the Charter, that an act of aggression has been committed by the State concerned.

2. When a complaint related to the crime of aggression has been lodged, the Court shall first seek to discover whether a determination has been made by the Security Council with regard to the alleged aggression by the State concerned and, if not, it will request, subject to the provisions of the Statute, the Security Council to proceed to such a determination.

3. If the Security Council does not make such a determination or does not make use of article 16 of the Statute within 12 months of the request, the Court shall proceed with the case in question.

Option 3[2]

For the purposes of the present Statute and subject to a prior determination by the United Nations Security Council of an act of aggression by the State concerned, the crime of aggression means any of the following acts: planning, preparing, initiating or carrying out a war of aggression.

Explanatory note

A. On the definition of the crime of aggression

(i) The previous text represents an attempt to consolidate, to the extent possible, the proposals already made on the question of definition of the crime of aggression for the purpose of the Rome Statute.

(ii) The text accepts two basic principles, which seem to enjoy widespread support: the principle under which the crime of aggression is committed by political or military leaders of a State; and the principle that the planning, preparation or ordering of aggression should be criminalized only when an act of aggression takes place.

(iii) Option 1 presents three variations after the first sentence in paragraph 1. These variations correspond to most of the various approaches that were suggested with regard to definition: general definition, definition based on the object or result of occupying or annexing the territory of the attacked State or part thereof, general definition plus detailed list of acts taken from General Assembly resolution 3314 (XXIX) of 14 December 1974.

(iv) Option 2 covers both the definition and the relationship with the Security Council, and is based, in its definitional part, on article 6 (a) of the Charter of the International Military Tribunal of Nuremberg.

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[2] Option 3 is duplicated and appears also under the definition of the crime of aggression since it covers the two issues, namely, the definition of the crime and conditions for the exercise of jurisdiction.

(v) On some points, square brackets appeared to be inevitable to show the different formulas that were suggested. Where part of the text is added in square brackets, this is not intended to indicate lesser support for that part.

B. On the conditions for the exercise of jurisdiction

(i) The text is an attempt to consolidate all the proposals circulated so far on this issue, taking also into account views expressed by delegations from the floor.

(ii) Option 1 is an attempt to reflect views seeking to reconcile the prerogatives of the Security Council with the independence of the Court.

Hence, it is founded on the following considerations:

- Article 5 (2) of the Statute of the International Criminal Court stipulates that the definition of the *crime of aggression* and the conditions under which the Court shall exercise jurisdiction with respect to this crime shall be consistent with the relevant provisions of the Charter of the United Nations;
- As set out in article 39 of the Charter, the Security Council has the responsibility for establishing the existence of an *act of aggression*;
- The Court exercises its jurisdiction over persons on the *crime of aggression* (articles 1, 5 and 25 of the Statute);
- The *crime of aggression* presupposes the existence of an *act of aggression*;
- The trigger mechanism should therefore recognize the primary responsibility of the Security Council to establish the existence of an *act of aggression* in accordance with the relevant provisions of the Charter;
- Variation 2 is based on the assumption that if, for any reason, the Security Council cannot make a decision, the Charter itself provides for an internal mechanism to address the issue.

(iii) Option 3 embodies both the definition and the relationship between the Court and the Security Council, and is based in its conditional part on the proposal as contained in article 23 (2) of the International Law Commission draft statute for the International Criminal Court.

Preliminary list of possible issues relating to the crime of aggression

Discussion paper proposed by the Coordinator

A possible checklist of issues to be addressed in developing proposals for a provision on aggression in accordance with article 5, paragraph 2, of the Rome Statute and resolution F, paragraph 7, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court

N.B. This preliminary list of possible issues is based on an initial review of the Rome Statute with a view to determining the provisions that may in some way be related to the definition of the crime of aggression. This non-exhaustive list is intended to facilitate a thematic discussion of possible issues most of which are closely interrelated.

I. Possible issues relating to the Rome Statute

- **Definition**

  (i) Whether the definition should be more general in nature referring to what may be the essential characteristics of the crime of aggression. (Possible instruments of reference: Charter of the United Nations; Nürnberg Charter; Draft Code of Crimes against the Peace and Security of Mankind; case law and other documents)

  (ii) Whether the definition should include a more specific list of acts which could constitute the crime of aggression. (Possible instrument of reference: General Assembly resolution 3314 (XXIX))

  (iii) Whether it would be possible to identify some acts listed in resolution 3314 (XXIX) and add them to the general definition of the crime of aggression.

- **Conditions under which the Court shall exercise jurisdiction**

  (i) What role should be played by the Security Council in relation to the jurisdiction of the Court over the crime of aggression?

  (ii) What action, if any, could be taken in the event that the Security Council fails or otherwise declines to determine that an act of aggression has occurred?

  (iii) What are the legal effects on the functions of the Court arising from a determination by the Security Council that an act of aggression was committed by a State?

- **Consistency with the relevant provisions of the Charter of the United Nations**

- **Complementarity and admissibility**

  How would the provisions of the Statute on complementarity (admissibility, challenges to the Court's jurisdiction) be applicable to the crime of aggression?

(This could include issues dealt with in preambular paragraphs 6 and 10, article 1, as well as articles 12 to 19 of the Rome Statute.)

- ***Ne bis in idem***

Applicability of exceptions to the crime of aggression (Rome Statute, art. 20 (3), only refers to crimes in arts. 6, 7 and 8).

- **General principles of criminal law**

Consider the relationship between the definition of the crime of aggression and the articles on general principles of criminal law:

(i) *Nullum crimen sine lege* (art. 22)

(ii) *Nulla poena sine lege* (art. 23)

(iii) Non-retroactivity *ratione personae* (art. 24)

(iv) Individual criminal responsibility (art. 25)

(v) Exclusion of jurisdiction over persons under eighteen (art. 26)

(vi) Irrelevance of official capacity (art. 27)

(vii) Responsibility of commanders and other superiors (art. 28)

(viii) Non-applicability of statute of limitations (art. 29)

(ix) Mental element (art. 30)

(x) Grounds for excluding criminal responsibility (art. 31)

(xi) Mistake of fact or mistake of law (art. 32)

(xii) Superior orders and prescription of law (art. 33)

- **Investigation and prosecution**

Consider the provisions concerning the investigation and prosecution of crimes with respect to the crime of aggression (e.g., initiation of an investigation (art. 53))

- **National security information**

Consider the provisions concerning the protection of national security information in relation to the crime of aggression (art. 57 (3) (c), art. 72, art. 93 (4) and art. 99 (5))

- **International cooperation and judicial assistance**

These provisions may require further consideration depending upon the applicability of the principle of complementarity to the crime of aggression.

The following parts of the Rome Statute do not appear to raise possible issues regarding the definition of the crime of aggression:

Part 4. Composition and Administration of the Court;

Part 7. Penalties (The penalties set forth in article 77 are applicable to all crimes referred to in article 5.);

Part 8. Appeal and Revision;

Part 10. Enforcement;

Part 11. Assembly of States Parties;

Part 12. Financing;

Part 13. Final Clauses (The provision on aggression is to be adopted in accordance with articles 121 and 123 pursuant to article 5 of the Rome Statute.).

II. Possible issues relating to the Elements of Crimes

- The elements of the crime of aggression are provided for in resolution F rather than article 9 of the Rome Statute.
- Consider the structure and general provisions of the elements of the other crimes prepared pursuant to article 9 of the Rome Statute to ensure consistency.

III. Possible issues relating to the Rules of Procedure and Evidence

- Review the final text of the Rules of Procedure and Evidence prepared by the Preparatory Commission to determine whether there are provisions that require consideration in relation to the definition of the crime of aggression.

IV. Other possible issues

- What are the legal effects on the ICC of a decision of the International Court of Justice concerning aggression?

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Addendum

Annex II

A draft relationship agreement between the United Nations and the International Criminal Court

Discussion paper proposed by the Coordinator*

The United Nations and the International Criminal Court,

Bearing in mind that in accordance with the Charter of the United Nations, the main purposes of the United Nations, inter alia, are to bring about by peaceful means, in conformity with the principles of justice and international law, the settlement of international disputes or situations that might lead to a breach of the peace and to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion,

Acknowledging the key role played by the United Nations under the Charter in the peaceful settlement of international disputes and in solving international problems of an economic, social, cultural or humanitarian character,

Bearing in mind that the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court on 17 July 1998 adopted the Rome Statute of the International Criminal Court,[1]

Noting the important role assigned to the International Criminal Court in dealing with the most serious crimes of concern to the international community as a

* The Working Group will consider the structure of the draft at its next session; the Working Group deferred consideration of the preamble to its next session.

[1] A/CONF.183/9.

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whole, as referred to in the Rome Statute, and which may threaten the peace, security and well-being of the world,

Bearing in mind that, in accordance with the Rome Statute, the International Criminal Court is established as an independent permanent institution in relationship with the United Nations system,

Recalling that, in accordance with article 2 of the Rome Statute, the International Criminal Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of the States Parties to the Rome Statute and thereafter concluded by the President of the Court on its behalf,

Recalling also that the Rome Statute of the International Criminal Court reaffirms the Purposes and Principles of the Charter of the United Nations,

Noting the responsibilities of the Secretary-General of the United Nations under the provisions of the Rome Statute of the International Criminal Court and, in particular, under its article 123 concerning the convening of Review Conferences,

Desiring to make provision for a mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated,

Taking into account for this purpose the provisions of the Charter of the United Nations and the provisions of the Rome Statute of the International Criminal Court,

Have agreed as follows:

Article 1
Purpose of the Agreement

The present Agreement, which is entered into by the United Nations and the International Criminal Court ("the Court"), pursuant to the provisions of the Charter of the United Nations ("the Charter") and the Rome Statute of the International Criminal Court ("the Statute"), respectively, defines the terms on which the United Nations and the Court shall be brought into relationship.

Article 2
Principles

1. The United Nations recognizes the Court as an independent permanent judicial institution which, in accordance with articles 1 and 4 of the Statute, has international legal personality and such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes.

2. The Court recognizes the responsibilities of the United Nations under the Charter.

3. The United Nations and the Court respect each other's status and mandate.

Article 3
Obligation of cooperation and coordination

The United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely,

whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute.

Article 4
Cooperation between the Security Council of the United Nations and the Court

1. When the Security Council, acting under Chapter VII of the Charter of the United Nations, decides to refer to the Prosecutor of the Court ("the Prosecutor"), pursuant to article 13, paragraph (b), a situation in which one or more of the crimes referred to in article 5 of the Statute appears to have been committed, the Secretary-General of the United Nations ("the Secretary-General") shall immediately transmit the written decision of the Security Council to the Prosecutor together with documents and other materials that may be pertinent to the decision of the Council. Information provided by the Court to the Security Council in accordance with the Statute and the Rules of Procedure and Evidence shall be transmitted through the Secretary-General.

2. When the Security Council adopts under Chapter VII of the Charter a resolution requesting the Court, pursuant to article 16 of the Statute, not to commence or proceed with an investigation or prosecution, this request shall immediately be transmitted by the Secretary-General to the President of the Court and the Prosecutor.

3. If the Court, pursuant to article 87, paragraph 5 (b) or paragraph 7, of the Statute, decides to inform the Security Council of a failure of cooperation with its requests, or to refer a matter to the Security Council, as the case may be, the Registrar of the Court ("the Registrar") shall convey to the Security Council through the Secretary-General the decision of the Court together with relevant information in the case. The Security Council, through the Secretary-General, shall inform the Court, through the Registrar, of action, if any, taken by it under the circumstances.

Article 5
Cooperation between the United Nations and the Prosecutor

1. With due regard to its responsibilities and competence under the Charter of the United Nations and subject to its rules, the United Nations undertakes to cooperate with the Prosecutor and to enter with the Prosecutor into such arrangements or, as appropriate, agreements as may be necessary to facilitate such cooperation, in particular when the Prosecutor exercises, under article 54 of the Statute, his or her duties and powers with respect to investigation and seeks the cooperation of the United Nations in accordance with that article.

2. Subject to the rules of the organ concerned, the United Nations undertakes to cooperate in relation to requests from the Prosecutor in providing such additional information as he or she may seek, in accordance with paragraph 2 of article 15 of the Statute, from organs of the United Nations in connection with investigations initiated *proprio motu* by the Prosecutor pursuant to that article. The Prosecutor shall address a request for such information to the Secretary-General who shall convey it to the presiding officer or other appropriate officer of the organ concerned.

3. The United Nations and the Prosecutor may agree that the United Nations provide documents or information to the Prosecutor on condition of confidentiality

and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or to third parties, at any stage of the proceedings or thereafter, without the consent of the United Nations.

4. The Prosecutor, the United Nations, or its programmes, funds and offices concerned may enter into such arrangements as may be necessary to facilitate their cooperation for the implementation of this article, in particular in order to ensure the confidentiality of information, the protection of any person, including former or current United Nations personnel, and the security or proper conduct of any operation or activity of the United Nations.

Article 6
General provisions regarding cooperation between the United Nations and the Court

1. With due regard to its responsibilities and competence under the Charter and subject to its rules, the United Nations undertakes to cooperate with the Court and to provide to the Court such information or documents as the Court may request pursuant to paragraph 6 of article 87 of the Statute.

2. The United Nations or its programmes, funds and offices concerned may agree to provide to the Court other forms of cooperation and assistance compatible with the provisions of the Charter and the Statute.

3. In the event that disclosure of information or documents, or the provisions of other forms of cooperation would endanger the safety or security of current or former personnel of the United Nations or otherwise prejudice the security or proper conduct of any operation or activity of the United Nations, the Court may order, particularly at the request of the United Nations, appropriate measures of protection.

Article 7

(Now article 10 (1) (c))

Article 8
Rules concerning United Nations privileges and immunities[2]

If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if, in the circumstances, such person enjoys, according to relevant rules of international law, any privileges and immunities as are necessary for the independent exercise of his or her work for the Organization, the United Nations undertakes to cooperate fully with the Court and to take all necessary measures in order to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities.

Article 9
Reciprocal representation

1. The Court may attend and participate in the work of the General Assembly of the United Nations in the capacity of observer. The United Nations shall, subject to

[2] The Working Group will reconsider this article at the next session; the Working Group also deferred consideration of additional paragraphs to this article to the next session.

the rules and practice of the bodies concerned, invite the Court to attend meetings and conferences convened under the auspices of the United Nations, where observers are allowed, and whenever matters of interest to the Court are under discussion.

2. Whenever the Security Council considers matters related to the activities of the Court, the President of the Court or the Prosecutor may address the Council, at its invitation, in order to give assistance with regard to matters within the jurisdiction of the Court.

3. Subject to the applicable provisions of the Rules of Procedure and Evidence, the United Nations shall have a standing invitation to attend public hearings of the Chambers of the Court that relate to cases of interest to the Organization.

4. Subject to the rules governing its operation, the Assembly of States Parties ("the Assembly") shall invite the United Nations to send observers to its meetings whenever matters of interest to the Organization are under discussion.[3]

Article 10
Exchange of information

1. Without prejudice to other provisions of the present Agreement concerning submission of documents and information concerning particular cases before the Court, the United Nations and the Court shall, to the fullest extent possible and practicable, arrange for the exchange of information and documents of mutual interest. In particular:

(a) The Secretary-General shall:

(i) Transmit to the Court information on developments related to the Statute which are relevant to the work of the Court, including information on communications received by the Secretary-General in the capacity of depositary of the Statute or depositary of any other agreements which relate to the exercise by the Court of its jurisdiction;

(ii) Keep the Court informed regarding the implementation of paragraphs 1 and 2 of article 123 of the Statute related to the convening by the Secretary-General of Review Conferences;

(iii) In addition to the requirement provided in paragraph 7 of article 121 of the Statute, circulate to all States Members of the United Nations or members of specialized agencies or of the International Atomic Energy Agency which are not parties to the Statute the text of any amendment adopted pursuant to article 121 of the Statute;[4]

(b) The Registrar shall:

(i) Upon the request of the United Nations and in accordance with the Statute and the Rules of Procedure and Evidence, provide information and documentation related to pleadings, oral proceedings, judgements and orders, when the Court deems it appropriate;

[3] Some delegations suggested the deletion of this paragraph.
[4] Some delegations questioned the need for this subparagraph.

(ii) Furnish to the United Nations, with the concurrence of the Court and subject to its Statute and rules, any information relating to the work of the Court requested by the International Court of Justice in accordance with its Statute;

(c) The Court shall keep the United Nations informed about proceedings of the Court in cases that involve crimes committed against the personnel of the United Nations or involve the improper use of the flag, insignia or uniform of the United Nations resulting in death or serious personal injury.

2. The United Nations and the Court shall make every effort to achieve maximum cooperation with a view to avoiding undesirable duplication in the collection, analysis, publication and dissemination of information related to matters of mutual interest. They shall strive to combine, where appropriate, their efforts to secure the greatest possible usefulness and utilization of such information.

Article 11
Protection of confidentiality

If the United Nations is requested by the Court to provide information or documentation in its custody, possession or control which was disclosed to it in confidence by a State or an intergovernmental or international organization, the United Nations shall seek the consent of the originator to disclose that information or documentation. If the originator is a State Party to the Statute and the United Nations fails to obtain its consent to disclosure within a reasonable period of time, the United Nations shall inform the Court accordingly and the issue of disclosure shall be resolved between the State Party concerned and the Court in accordance with the Statute. If the originator is not a State Party to the Statute and refuses to consent to disclosure, the United Nations shall inform the Court that it is unable to provide the requested information or documentation because of a pre-existing obligation of confidentiality to the originator.

Article 12
Reports to the United Nations

The Court may, if it deems it appropriate, submit on its activities reports to the United Nations through the Secretary-General.

Article 12 bis[5]
Agenda items

1. The United Nations may propose items for consideration by the Assembly. In such cases, the Secretary-General shall notify the President of the Bureau of the Assembly accordingly, providing any relevant information with a view to the possible inclusion of such item in the provisional agenda of the following session of the Assembly or of its Bureau.

2. The Court may propose items for considerations by the United Nations. In such cases, the Court shall notify the Secretary-General of its proposal and provide any relevant information. The Secretary-General shall submit the proposed item to

[5] The Working Group did not have time to consider articles 12 bis to 21 at the current session.

the General Assembly or the Security Council, and also to any other United Nations body, as appropriate.

Article 13[6]
Request for advisory opinion from the International Court of Justice

The United Nations and the Court agree that a recommendation by the Assembly for referral to the International Court of Justice under paragraph 2 of article 119 of the Statute which involves a request for an advisory opinion shall be submitted to the General Assembly of the United Nations, which shall decide upon the request in accordance with Article 96 of the Charter.

Article 14
Personnel arrangements

1. The United Nations and the Court agree to consult and cooperate as far as practicable regarding personnel standards, methods and arrangements.

2. The United Nations and the Court agree to:

(a) Periodically consult on matters of mutual interest relating to the employment of their officers and staff, including conditions of service, duration of appointments, classification, salary scale and allowances, retirement and pension rights and staff regulations and rules;

(b) Cooperate in the interchange of personnel, where appropriate;

(c) Strive for maximum cooperation in order to achieve the most efficient use of specialized personnel, systems and services.

Article 15
Administrative cooperation

The United Nations and the Court shall consult, from time to time, concerning the most efficient use of facilities, staff and services with a view to avoiding the establishment and operation of overlapping facilities and services. They may also consult to explore the possibility of establishing common facilities or services in specific areas provided that there are cost savings.

Article 16
Conference services and facilities

1. The United Nations agrees that, upon the request of the Court, the United Nations shall, subject to availability and to any arrangement on costs and expenses referred to in paragraph 2 of article 18 of the present Agreement, provide to the Court such facilities and services at United Nations Headquarters as may be required for the meetings of the Assembly and of its Bureau, including translation and interpretation services, documentation and conference services.

2. The terms and conditions on which any such facilities or services of the United Nations may be provided to the Court shall, as appropriate, be the subject of supplementary arrangements.

[6] The Working Group deferred to the next session consideration of revised texts for this article proposed by some delegations.

3. The United Nations and the Court shall endeavour to facilitate access by the representatives of all States Parties to the Statute and observers in the Assembly, as provided for in paragraph 1 of article 112 of the Statute, to United Nations Headquarters where a meeting of the Assembly is to be held.

Article 17 [7] [8]
Laissez-passer

Without prejudice to the right of the Court to issue its own travel document, and in particular in the absence of any such travel document, the judges, the Prosecutor, the Deputy Prosecutor, the Registrar and officials of the Office of the Prosecutor and the Registry shall be entitled, in accordance with such special arrangements as may be concluded between the Secretary-General and the Court, to use the laissez-passer of the United Nations as a valid travel document[9] where such use is recognized by States Parties to, and in accordance, with the Agreement on the Privileges and Immunities of the International Criminal Court, concluded pursuant to article 48 of the Statute, or other agreements defining the privileges and immunities of the Court.

Article 18
Financial matters

1. The United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to articles 115 and 116 of the Statute shall be subject to separate arrangements.

2. The United Nations and the Court further agree that the costs and expenses resulting from the cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements between the United Nations and the Court.

3. The United Nations may, upon request of the Court and subject to paragraph 2 of this article, provide advice on financial and fiscal questions of interest to the Court.

Article 18 bis
Other agreements concluded by the Court

The United Nations and the Court shall consult, when appropriate, on the conclusion and registration by the United Nations of agreements concluded by the Court with States or international organizations.

[7] Some delegations questioned whether this article was necessary. Some delegations also suggested that consideration of this article should be deferred pending the completion of the articles on the privileges and immunities of the Court.

[8] Some delegations suggested that this article should be simplified and shortened.

[9] A suggestion was made to end the article after this word.

Article 19
Supplementary arrangements for the implementation of the present Agreement

The Secretary-General and the Court may, for the purpose of implementing the present Agreement, make such supplementary arrangements as may be found appropriate.

Article 19 bis
Settlement of disputes

The United Nations and the Court agree to settle any dispute related to the interpretation or application of this Agreement by appropriate means.

Article 20[10]
Amendments

The present Agreement may be amended by agreement between the United Nations and the Court. Any such amendment shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify in writing the other of the date of such approval and the Agreement shall enter into force on the date of the later of the said approvals.

Article 21[11]
Entry into force

The present Agreement shall be approved by the General Assembly of the United Nations and by the Assembly in accordance with article 2 of the Statute. The United Nations and the Court shall notify the other in writing of the date of such approval and the Agreement shall enter into force on the date of the later of the said approvals.

In witness thereof the undersigned have signed the present Agreement.

Signed this _____ day of _____ at United Nations Headquarters in New York in two copies in all the official languages of the United Nations and the Court.

[10] Some delegations suggested the inclusion of a paragraph on the provisional application of this Agreement.

[11] Idem.

Appendix

The Working Group deferred consideration to its next session of the proposals set out below.

Proposals for article 8[a]

Add the following new paragraph 2:

"If the Court requests the testimony of an official of the United Nations or one of its programmes, funds or agencies, the Organization undertakes to cooperate with the Court and, if necessary, will waive that person's obligation of confidentiality. The Secretary-General may request the Court to take all necessary measures to ensure the person's protection, guarantee the confidentiality of any information and documents which he or she may transmit to the Court, and safeguard the security of any operation or activity of the United Nations concerning which the person might testify before the Court."

Add the following new paragraph 3:

"The Secretary-General may be authorized by the Court to appoint a representative to assist any official of the United Nations who is summoned to appear as a witness in proceedings conducted by the Court."

Proposals for article 13

Proposal A
International Court of Justice[b]

"The United Nations and the Court agree that a recommendation by the Assembly of States Parties under paragraph 2 of article 119 of the Statute or an initiative by the Court to refer to the International Court of Justice a request for an advisory opinion shall be submitted to the General Assembly of the United Nations, which shall decide upon the request in accordance with Article 96 of the Charter."

Proposal B
Request for an advisory opinion[c]

"The General Assembly of the United Nations, in accordance with Article 96 of the Charter, shall take the necessary steps to enable the Assembly of States Parties to request the International Court of Justice to give an advisory opinion on any legal question arising within the scope of its activities, with the exception of a question that concerns the exercise by the International Criminal Court of its judicial competence or the mutual relationship between the Court and the United Nations."

[a] See PCNICC/2000/WGICC-UN/DP.6.
[b] See PCNICC/2001/WGICC-UN/DP.6.
[c] See PCNICC/2001/WGICC-UN/DP.8.

Proposals for article 16[d]

Add the following new paragraph 1:

"1. The Organization may, upon request of the Court, make available to the States Parties such facilities and technical services as may be required for the holding of the regular annual meetings and special sessions of the Assembly of States Parties and of meetings of its Bureau, including translation, interpretation, documentation and secretariat services. When the Organization is unable to meet the request of the Court, it shall notify the Court accordingly, giving reasonable notice."

Add the following new paragraph 2:

"2. The use of the Organization's facilities and technical services by the Assembly of States Parties, in the cases referred to in paragraph 1 of this article, shall take place in accordance with the modalities established by common agreement between the Court and the Organization."

Add the following new paragraph 3:

"3. The modalities and conditions for the use of the Organization's facilities and services by the Court in other cases may be the subject of separate agreements."

Proposals for article 18[e]

Paragraph 1

"The United Nations and the Court agree to make a separate arrangement governing the conditions according to which funds are allocated to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute. Such arrangement shall be submitted to the Assembly of States Parties and the General Assembly of the United Nations for approval."

Paragraph 2

"The United Nations and the Court further agree that the costs and expenses resulting from the cooperation or the provision of services pursuant to the present Agreement shall be subject to separate arrangements. At the request of any State Party, ~~T~~the Registrar shall inform the Assembly of States Parties ~~shall be kept informed through the Registrar~~ of the making of such arrangements."

Paragraph 3

The text is that of paragraph 3 of the text submitted by the Coordinator.

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[d] See PCNICC/2000/WGICC-UN/DP.6.
[e] See PCNICC/2001/WGICC-UN/DP.9.

United Nations PCNICC/2001/L.1/Rev.1/Add.2

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Addendum

Annex III

Draft financial regulations and rules

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Draft financial regulations and rules

Discussion paper proposed by the Coordinator

The Assembly of States Parties,

Noting that the Rome Statute of the International Criminal Court, article 113, provides that, except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by the Rome Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties,

Adopts the following Financial Regulations for the International Criminal Court.

Regulation 1
Applicability

1.1 These Regulations shall govern the financial administration of the International Criminal Court.

1.2 For the purposes of these Regulations:

(a) "Assembly of States Parties" means the Assembly of States Parties to the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998;

(b) "Committee on Budget and Finance" means the Committee established as such by the Assembly of States Parties;

(c) "Court" means the International Criminal Court;

(d) "Presidency" means the Presidency of the International Criminal Court;

(e) "Registrar" means the Registrar of the International Criminal Court;

(f) "Rome Statute" means the Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1998.

1.3 The Assembly of States Parties shall establish detailed financial rules and procedures in order to ensure effective financial administration and the exercise of economy.

Regulation 1 bis*

These regulations shall be implemented in a manner consistent with the responsibilities of the Prosecutor and of the Registrar as set out in articles 42, paragraph 2, and 43, paragraph 1, of the Rome Statute. The Prosecutor and the Registrar shall cooperate, particularly in order to allow the Prosecutor the independent exercise of his or her functions under the Statute.

* This provision will be the subject of further discussion in the Working Group.

Regulation 2
The financial period

2.1 The financial period shall consist initially of one calendar year. The Assembly of States Parties shall keep under review the financial period.

Regulation 3
Programme budget

3.1 The proposed programme budget for each financial period shall be prepared by the Registrar in consultation with the other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute. The proposed programme budget shall be divided into parts, sections and, as appropriate, programme support, in accordance with the relevant articles of the Statute. The proposed programme budget shall include funding for the expenses of the Assembly of States Parties, including its Bureau and subsidiary bodies.

3.2* The proposed programme budget shall cover income and expenditures for the financial period to which they relate and shall be presented in the currency of the statutory headquarters of the Court.

3.3 The budget narrative shall set out wherever possible concrete objectives, expected results and key performance indicators for the budget period. It shall be accompanied by such information, annexes and explanatory statements as may be requested by or on behalf of the Assembly of States Parties, including a statement on the main changes in comparison with the budget of the previous financial period and such further annexes or statements as the Registrar may deem necessary and useful. The Registrar shall monitor achievement of objectives and service delivery during the budget period and report in the context of the next proposed budget on actual performance attained.

3.4 The Registrar shall submit the proposed programme budget for the following financial period to the Committee on Budget and Finance at least 45 days prior to the meeting at which the Committee shall consider the proposed programme budget. At the same time, the Registrar shall also submit the proposed programme budget to the States Parties.

3.5 The Committee on Budget and Finance shall consider the proposed programme budget and shall submit its comments and recommendations to the Assembly of States Parties. The Assembly shall consider the proposed programme budget and take a decision on it.

3.6 Supplementary budget proposals may be submitted by the Registrar with respect to the current financial period if circumstances unforeseen at the time of adopting the budget make it necessary. In this case, the supplementary budget proposal shall be in a form consistent with the approved budget. The provisions of these Regulations shall be applicable to the proposed supplementary budget. Decisions of the Assembly of States Parties on the supplementary budget proposed by the Registrar shall be based on the recommendations of the Committee on Budget and Finance.

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* This provision will be the subject of further discussion in the Working Group.

3.7 The Registrar may enter into commitments for future financial periods, provided that such commitments are for activities which have been approved by the Assembly of States Parties and are expected to occur or continue beyond the end of the current financial period.

Regulation 4
Appropriations

4.1 The appropriations adopted by the Assembly of States Parties shall constitute an authorization for the Registrar to incur obligations and make payments for the purposes of which the appropriations were adopted and up to the amounts adopted.

4.2 Appropriations shall be available for obligation during the financial period to which they relate.

4.3 Appropriations shall remain available for twelve months following the end of the financial period to which they relate to the extent that they are required to liquidate any outstanding legal obligations of the financial period. The balance of the appropriations remaining unobligated at the close of the financial period, after deducting therefrom any contributions from States Parties relating to that financial year which remain unpaid, shall form part of any cash surplus of the budget and shall be treated in accordance with regulation 4.4 bis.

4.4 At the end of the twelve-month period provided in regulation 4.3, the then remaining unspent balance of appropriations retained after deducting therefrom any contributions from States Parties relating to the financial period of the appropriations which remain unpaid shall be treated as a cash surplus as in regulation 4.3. Any obligations remaining a valid claim at that time shall be charged against current appropriations.

The provisional cash surplus for the financial period shall be determined by establishing the balance between credits (assessed contributions actually received for the financial period and miscellaneous income received during the financial period) and charges (all disbursements against the appropriations for that financial period and provisions for unliquidated obligations for that financial period).

The cash surplus for the financial period shall be determined by crediting to the provisional cash surplus any arrears of prior periods' assessed contributions from States Parties received during this period and any savings from the provisions made for unliquidated obligations as mentioned above. Any remaining outstanding obligations shall be re-obligated against the appropriations of the current financial period.

4.4 bis Any cash surplus in the budget at the close of any financial period shall be apportioned among States Parties in proportion to the scale of assessments applicable to the financial period to which the surplus relates. As of 1 January following the year in which the audit of the accounts of the financial period is completed, the amount so apportioned to a State Party shall be surrendered to such State Party if its contribution for that financial period has been paid in full and shall be applied to liquidate, in whole or in part, first, any advance due to the Working Capital Fund; secondly, any arrears of assessed contributions;

and thirdly, assessed contributions for the calendar year following the year in which the audit is completed.

While any cash surplus in the budget shall be apportioned among all States Parties, the amount so apportioned shall be surrendered only to those States Parties which have paid in full their contributions for that financial period. Amounts apportioned but not surrendered shall be retained by the Registrar until such time as the contribution for the relevant financial period is paid in full, at which time they shall be applied as set forth above.

4.5 No transfer between appropriation sections may be made without authorization by the Assembly of States Parties, unless such a transfer is made necessary by exceptional circumstances, and is in accordance with criteria to be agreed upon by the Assembly of States Parties.

4.6 The officials heading the organs referred to in article 34, subparagraphs (c) and (d), of the Rome Statute shall be accountable to the Assembly of States Parties for the proper management and administration of the financial resources for which they are responsible, as set out in articles 42, paragraph 2, and 43, paragraph 1, of the Rome Statute. They shall prudently manage the appropriations so as to ensure that expenditures can be met from funds available, keeping in view the actual contributions received and the availability of cash balances.

Regulation 5
Provision of funds

5.1 The funds of the Court shall include:

(a) Assessed contributions made by States Parties in accordance with article 115, subparagraph (a), of the Rome Statute;

(b) Funds provided by the United Nations in accordance with article 115, subparagraph (b), of the Rome Statute;

(c) Voluntary contributions by Governments, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Such other funds to which the Court may become entitled or may receive.

5.2* The appropriations, subject to the adjustments effected in accordance with the provisions of regulation 5.3, shall be financed by contributions from States Parties in accordance with an agreed scale of assessment, as provided in article 117 of the Rome Statute. The scale shall be based on the United Nations regular budget scale of assessments adjusted to take into account the differences in membership between the United Nations and the Court. Pending the receipt of such contributions, the appropriations may be financed from the Working Capital Fund.

5.3 The contributions of States Parties shall be assessed for a financial period on the basis of the appropriations approved by the Assembly of States Parties for

* This provision will be the subject of further discussion in the Working Group.

that financial period. Adjustments to the assessments of States Parties shall be made in respect of:

(a) Any balance of the appropriations surrendered under regulation 4.4 bis;

(b) Contributions resulting from the assessment of new States Parties under the provisions of regulation 5.9.

5.4 After the Assembly of States Parties has reviewed and adopted the budget and determined the amount of the Working Capital Fund, the Registrar shall:

(a) Transmit the relevant documents to the States Parties;

(b) Inform the States Parties of their commitments in respect of annual assessed contributions and advances to the Working Capital Fund;

(c) Request them to remit their contributions and advances.

5.5 Assessed contributions and advances shall be considered as due and payable in full within thirty days of the receipt of the communication of the Registrar referred to in regulation 5.4 or as of the first day of the calendar year to which they relate, whichever is the later. As of 1 January of the following calendar year, the unpaid balance of such contributions and advances shall be considered to be one year in arrears.

5.6* Annual contributions and advances to the Working Capital Fund shall be assessed and paid in the currency of the statutory headquarters of the Court.

5.7 Payments made by a State Party shall be credited first to the Working Capital Fund and then to the contributions due, in the order in which the State Party was assessed.

5.8 The Registrar shall submit to each meeting of the Assembly of States Parties a report on the collection of contributions and advances to the Working Capital Fund.

5.9 New States Parties shall be required to make contributions for the year in which they become States Parties and to provide their proportion of the total advances to the Working Capital Fund at rates to be determined by the Assembly of States Parties.

Regulation 6[1]
Funds

6.1* There shall be established a General Fund for the purpose of accounting for the expenditures of the Court. The contributions referred to in regulation 5.1 by States Parties and miscellaneous income and any advances made from the Working Capital Fund to finance expenditures shall be credited to the General Fund.

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* This provision will be the subject of further discussion in the Working Group.

[1] With respect to draft regulations 6, 8, 9 and 11.3, it may be considered whether a relatively small secretariat would require as many funds and accounts as the United Nations itself. The use of interrelated sub-accounts for banking and internal purposes might be considered.

6.2* There shall be established a Working Capital Fund in an amount and for purposes to be determined from time to time by the Assembly of States Parties. The Working Capital Fund shall be constituted by advances from States Parties. Advances shall be made in accordance with an agreed scale of assessment based upon the scale used for the regular budget. Advances shall be carried to the credit of States Parties which have made such advances.

6.3 Advances made from the Working Capital Fund to finance budgetary appropriations shall be reimbursed to the Fund as soon as and to the extent that income is available for that purpose.

6.4* Except when such advances are recoverable from some other source, advances made from the Working Capital Fund for unforeseen and extraordinary expenses or other authorized purposes shall be reimbursed through the submission of supplementary budget proposals.

6.5 Income derived from investments of the Working Capital Fund shall be credited to miscellaneous income.

6.6* Trust funds, reserve and special accounts may be established by the Registrar and shall be reported to the [Presidency].

6.7* The purposes and limits of each trust fund, reserve and special account shall be clearly defined by the appropriate authority. Unless otherwise decided by the Assembly of States Parties, such funds and accounts shall be administered in accordance with these Regulations.

Regulation 7
Other income

7.1 All other income except:

(a) Assessed contributions made by States Parties to the budget;

(b) Funds provided by the United Nations in accordance with article 115, subparagraph (b), of the Rome Statute;

(c)* Voluntary contributions made by States Parties, other States, international organizations, individuals, corporations and other entities, in accordance with article 116 of the Rome Statute;

(d) Direct refunds of expenditures made during the financial period,

shall be classed as miscellaneous income, for credit to the General Fund.

7.2 Voluntary contributions, gifts and donations, whether or not in cash, may only be accepted by the Registrar, provided that they are consistent with the nature and functions of the Court and the criteria to be adopted by the Assembly of States Parties on the subject, in accordance with article 116 of the Rome Statute. Acceptance of contributions which directly or indirectly involve additional financial liability for the Court shall require the consent of the Assembly of States Parties.

* This provision will be the subject of further discussion in the Working Group.

7.3* Contributions accepted for purposes specified by the donors shall be treated as trust funds or special accounts.

7.4* Contributions in respect of which no purpose is specified shall be treated as miscellaneous income and reported as "gifts" in the accounts of the financial period.

Regulation 8[2]
Custody of funds

8.1 The Registrar shall designate the bank or banks in which the funds of the Court shall be kept.

Regulation 9[3]
Investment of funds

9.1 The Registrar may make short-term investments of moneys not needed for immediate requirements and shall periodically inform the Presidency and, through the Committee on Budget and Finance, the Assembly of States Parties of such investments.

9.2 Income derived from investments shall be credited to miscellaneous income or as provided in the rules relating to each trust fund or special account.

Regulation 10
Internal control

10.1 The Registrar shall:

(a) Cause all payments to be made on the basis of supporting vouchers and other documents which ensure that the services or goods have been received and that payments have not previously been made;

(b) Designate the officers who may receive moneys, incur obligations and make payments on behalf of the Court;

(c) Maintain an internal financial control which shall provide for effective current examination and/or review of financial transactions in order to ensure:

(i) The regularity of the receipt, custody and disposal of all funds and other financial resources of the Court;

(ii) The conformity of obligations and expenditures with the appropriations or other financial provisions voted by the Assembly

* This provision will be the subject of further discussion in the Working Group.

[2] See footnote 1.

[3] See footnote 1. In addition, it may be considered whether it would be appropriate and cost-effective for a relatively small secretariat to acquire the investment expertise needed in order for the Registrar to effectively make short-term investments. It might be preferable to provide that "moneys not needed to meet immediate requirements may be placed in higher-interest-yielding fixed-term bank accounts".

of States Parties, or with the purposes and rules relating to trust funds and special accounts;

(iii) The economic use of the resources of the Court.

10.2 Obligations for the current financial period or commitments for current and future financial periods shall be incurred only after allotments or other appropriate authorizations have been made in writing under the authority of the Registrar.

10.3 The Registrar may make such ex gratia payments as he or she deems to be necessary in the interest of the Court, provided that the statement of such payments shall be submitted to the Assembly of States Parties with the accounts.

10.4 The Registrar may, after full investigation, authorize the writing-off of losses of cash, stores and other assets, provided that a statement of all such amounts written off shall be submitted to the Auditor with the accounts and reported to the Assembly of States Parties.

10.5* Substantial purchases of equipment, supplies and other requirements as specified in the Financial Rules shall be by tender. Such tenders shall be invited by advertisement, except where the Registrar, with the approval of the Presidency, deems that, in the interests of the Court, a departure from the rule is desirable.

Regulation 11
The accounts

11.1 The Registrar shall submit to the Auditor accounts for the financial period not later than 31 March following the end of such period. In addition, the Registrar shall maintain, for management purposes, such accounting records as are necessary. The accounts for the financial period shall show:

(a) The income and expenditures of all funds;

(b) The status of appropriations, including:

(i) The original budget appropriations;

(ii) The appropriations as modified by any transfers;

(iii) Credits, if any, other than the appropriations adopted by the Assembly of States Parties;

(iv) The amounts charged against those appropriations and/or other credits;

(c) The assets and liabilities of the Court.

The Registrar shall also give such other information as may be appropriate to indicate the current financial position of the Court.

* This provision will be the subject of further discussion in the Working Group.

11.2* The accounts of the Court shall be presented in the currency of the statutory headquarters of the Court. Accounting records may, however, be kept in such other currency as the Registrar may deem necessary.

11.3[4] Appropriate separate accounts shall be maintained for all trust funds and special accounts.

Regulation 12
Audit

12.1 The Assembly of States Parties shall appoint an Auditor, which may be an internationally recognized firm of auditors or an Auditor General or an official of a State Party with an equivalent title. The Auditor shall be appointed for a period of four years and its appointment may be renewed.

12.2 The audit shall be conducted in conformity with generally accepted common auditing standards, subject to any special directions of the Assembly of States Parties and in accordance with the additional terms of reference set out in the annex to these Regulations.

12.3 The Auditor may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Court.

12.4 The Auditor shall be completely independent and solely responsible for the conduct of the audit.

12.5 The Assembly of States Parties may request the Auditor to perform certain specific examinations and issue separate reports on the results.

12.6 The Registrar shall provide the Auditor with the facilities required in the performance of the audit.

12.7 The Auditor shall issue a report on the audit of the financial statements and relevant schedules relating to the accounts for the financial period, which shall include such information as the Auditor deems necessary with regard to matters referred to in regulation 12.3 and in the additional terms of reference as set out in the annex to these Regulations.

12.8 The Registrar, in consultation with the other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, shall examine the audit reports, including reports referred to in regulation 12.5, and shall forward the financial statements and the audit report to the Committee on Budget and Finance, with such comments on the audit report as they deem appropriate.

12.9 The Committee on Budget and Finance shall examine the financial statements and audit reports, including reports referred to in regulation 12.5 and the comments of the Registrar and other organs of the Court referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall forward them to the Assembly of States Parties, with such comments as it deems appropriate, for consideration and approval.

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* This provision will be the subject of further discussion in the Working Group.

[4] See footnote 1.

Regulation 13
Decisions involving expenditures

13.1* Neither the Court nor its subsidiary bodies shall take any decision involving either a change in the budget approved by the Assembly of States Parties or the possible requirement of expenditure unless it has received and taken account of the statement of the Registrar on the budget implications of the proposal and the recommendations of the Committee on Budget and Finance thereon.

13.2* Where, according to the Committee on Budget and Finance, the proposed expenditure cannot be made from existing appropriations, the decision shall not be taken until the Assembly of States Parties has made the necessary appropriations.

Regulation 14
General provisions

14.1 These Regulations shall become effective on a date to be decided upon by the Assembly of States Parties and shall apply to the initial financial period agreed to by the Assembly of States Parties and to subsequent financial periods as provided for in regulation 2.1.

14.2 These Regulations may be amended by the Assembly of States Parties.

* This provision will be the subject of further discussion in the Working Group.

Annex to the Financial Regulations

Additional terms of reference governing the audit of the International Criminal Court

1. The Auditor shall perform such audit of the accounts of the Court, including all trust funds and special accounts, as it deems necessary in order to satisfy itself:

   (a) That the financial statements are in accord with the books and records of the Court;

   (b) That the financial transactions reflected in the statements have been in accordance with the financial rules and regulations, the budgetary provisions and other applicable directives;

   (c) That the securities and moneys on deposit and on hand have been verified by certificates received direct from the Court's depositaries or by actual count;

   (d) That the internal controls, including internal oversight, are adequate in the light of the extent of reliance placed thereupon.

2. The Auditor shall be the sole judge as to the acceptance in whole or in part of certifications and representations by the Registrar and may proceed to such detailed examination and verification as it chooses of all financial records, including those relating to supplies and equipment.

3. The Auditor and its staff shall have free access at all convenient times to all books, records and other documentation which are, in the opinion of the Auditor, necessary for the performance of the audit. Information which is classified as privileged and which the Registrar (or a designated senior official) agrees is required by the Auditor for the purposes of the audit and information classified as confidential shall be made available on application. The Auditor and its staff shall respect the privileged and confidential nature of any information so classified which has been made available and shall not make use of it except in direct connection with the performance of the audit. The Auditor may draw the attention of the Court and the Assembly of States Parties to any denial of information classified as privileged which, in its opinion, was required for the purpose of the audit.

4. The Auditor shall have no power to disallow items in the accounts but shall draw the attention of the Registrar, for appropriate action, to any transaction for which it entertains doubt as to legality or propriety. Audit objections, to these or any other transactions, arising during the examination of the accounts shall be communicated immediately to the Registrar.

5. The Auditor (or such of its officers as it may designate) shall express and sign an opinion on the financial statements which shall read as follows:

   "We have examined the following appended financial statements, numbered ... to ..., properly identified, and relevant schedules of the International Criminal Court for the financial period ended 31 December ... Our examination included a general review of the

accounting procedures and such tests of the accounting records and other supporting evidence as we considered necessary in the circumstances."

The opinion shall also state, as appropriate, whether:

(a) The financial statements present fairly the financial position as at the end of the period and the results of their operations for the period then ended;

(b) The financial statements were prepared in accordance with the stated accounting principles;

(c) The accounting principles were applied on a basis consistent with that of the preceding financial report;

(d) Transactions were in accordance with the Financial Regulations and legislative authority.

6. The report of the Auditor on the financial operations of the Court for the financial period shall be submitted to the Assembly of States Parties in accordance with regulations 12.8 and 12.9. It shall indicate:

(a) The type and scope of the Auditor's examination;

(b) Matters affecting the completeness and accuracy of the accounts, including, where appropriate:

(i) Information necessary to the correct interpretation of the accounts;

(ii) Any amounts which ought to have been received but which have not been brought to account;

(iii) Any amounts for which a legal or contingent obligation exists and which have not been recorded or reflected in the financial statements;

(iv) Expenditures not properly substantiated;

(v) Whether proper books of accounts have been kept — where in the presentation of statements there are deviations of a material nature from the generally accepted accounting principles applied on a consistent basis, these should be disclosed;

(c) Other matters which the Auditor considers should be brought to the notice of the Assembly of States Parties, such as:

(i) Cases of fraud or presumptive fraud;

(ii) Wasteful or improper expenditure of the Court's money or other assets, notwithstanding that the accounting for the transaction may be correct;

(iii) Expenditure likely to commit the Court to further outlay on a large scale;

(iv) Any defect in the general system or detailed regulations governing the control of receipts and disbursements or of supplies and equipment;

(v) Expenditure not in accordance with the intention of the Assembly of States Parties after making allowance for duly authorized transfers within the budget;

(vi) Expenditure in excess of appropriations as amended by duly authorized transfers within the budget;

(vii) Expenditure not in conformity with the authority which governs it;

(d) The accuracy or otherwise of the supplies and equipment records as determined by stock-taking and examination of the records;

(e) If appropriate, transactions accounted for in a previous period concerning which further information has been obtained or transactions in a later period concerning which it seems desirable that the Assembly of States Parties should have early knowledge.

7. The Auditor may make such observations with respect to its findings resulting from the audit and such comments on the Registrar's financial report as it deems appropriate to the Assembly of States Parties, the Prosecutor or the Registrar.

8. Whenever the scope of audit of the Auditor is restricted, or whenever it is unable to obtain sufficient evidence, it shall refer to the matter in its opinion and report, making clear in the report the reasons for its comments and the effect on the financial position and the financial transactions as recorded.

9. In no case shall the Auditor include criticism in its report without first affording the Registrar an adequate opportunity of explanation on the matter under observation.

10. The Auditor shall not be required to mention any matter referred to in the foregoing that, in its opinion, is insignificant in all respects.

Appendix I

Draft resolution of the Preparatory Commission on the establishment of the Committee on Budget and Finance

Discussion paper proposed by the Coordinator

The Preparatory Commission recommends that the Assembly of States Parties adopt the following resolution:

"*The Assembly of States Parties,*

"*Bearing in mind* article 112, paragraphs 2 (b) and (d) and 4, of the Rome Statute,

"*Desiring* to provide an appropriate mechanism for the budgetary and financial review and monitoring of the resources of the International Criminal Court, including those of the Assembly,

"*Decides* to establish a Committee on Budget and Finance in accordance with the terms of reference set out in the annex to the present resolution.

"Annex

"1. The Assembly of States Parties establishes, in accordance with the present resolution, a Committee on Budget and Finance composed of 12 members.

"2. The Assembly shall elect the members of the Committee on Budget and Finance, who should not be of the same nationality, on the basis of equitable geographical distribution. The members of the Committee on Budget and Finance shall be experts of recognized standing and experience in financial matters at the international level from States Parties. They shall carry out their duties for three calendar years and may be re-elected. Of the 12 members who are initially elected, 4 shall be elected for a period of one year, 4 for a period of two years and the remaining 4 for a period of three years.

"3. The Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications or any other matter of a financial, budgetary or administrative nature, as may be entrusted to it by the Assembly of States Parties. In particular, it shall review the proposed programme budget of the Court, prepared by the Registrar, in consultation with the other organs referred to in article 34, subparagraphs (a) and (c), of the Rome Statute, and shall make the relevant recommendations to the Assembly concerning the proposed programme budget. It shall also consider reports of the Auditor concerning the Court's financial operations and shall transmit them to the Assembly together with any comments which it may deem appropriate.

"4. The Committee on Budget and Finance shall meet at least once per year.

"5. The Assembly of States Parties shall keep under review the number of members of the Committee on Budget and Finance."

Appendix II

Draft resolution of the Assembly of States Parties on relevant criteria for voluntary contributions to the International Criminal Court

Discussion paper proposed by the Coordinator[1]

The Assembly of States Parties,

Bearing in mind the seventh preambular paragraph and article 116 of the Rome Statute, and taking note of regulation 7.2 of the Financial Regulations of the International Criminal Court,

1. *Requests* Governments, international organizations, individuals, corporations and other entities making voluntary contributions to declare that such contributions are not intended to affect the independence of the Court;

2. *Decides* that the Registrar shall assure himself/herself that any offered contributions:

(a) Will not affect the independence of the Court;

(b) Will fulfil any criteria the Assembly of States Parties may establish;

3. *Decides also* that the Registrar shall report to the Assembly of States Parties all offered voluntary contributions, regardless of whether they were accepted or refused.

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[1] The present paper is to be discussed in conjunction with some written proposals submitted by delegations.